In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1287

JULIUS GRIECO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial with others in 1961 in the United States District Court for the Northern District of Illinois, petitioner was convicted of conspiracy to use the mails in a scheme to defraud and of causing the interstate transportation of forged or falsely altered securities, in violation of 18 U.S.C. 371 and 2314. He was sentenced to fifteen years' imprisonment. The court of appeals affirmed, 299 F. 2d 511 (C.A. 7), certiorari denied, 370 U.S. 925.

At the trial, which pre-dated *Miranda* v. *Arizona*, 384 U.S. 436, no objection on voluntariness grounds was interposed to the introduction of testimony by two F.B.I. agents about incriminating statements

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made by petitioner during the investigation leading to his indictment. In the present motion under 28 U.S.C. 2255, petitioner argued that the failure to give *Miranda* warnings, notwithstanding that *Miranda* is not retroactive, rendered the voluntariness of his statements suspect and required the holding of a hearing pursuant to *Jackson* v. *Denno*, 378 U.S. 368. The district court denied the motion. The court of appeals affirmed (Pet. App. 1–4). It held that, under *Kaufman* v. *United States*, 394 U.S. 217, 227, n. 8, petitioner had deliberately bypassed orderly federal procedures by his failure to object to the voluntariness of the statements and could not now raise the issue on collateral attack. The court noted in addition that there was no evidence of coercion and that petitioner was not even in custody when he gave the statements. Pet. App. A, 3–4. In these circumstances, the rulings denying relief were plainly justified.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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